IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

CHAMBER SUMMONS NO.257 OF 2006
IN
WRIT PETITION NO. 2103 OF 2006

Abdul Rashid Abdul Rehman Yusuf & Anr. ...Petitioners.
Vs.
The State of Maharashtra & Ors. ...Respondents.
And
Abdul Rashid Abdul Rehman Yusuf. ...Applicant.

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Mr. Milind Sathe i/b. Mr. V. M. Bhardwaj for the Applicant.
Mr. Janak Dwarkadas, Senior Advocate with Mr. Ranjit Sharma and Mr. S. P. Nagvekar for the Petitioners.
Mr. Ravi Kadam, Advocate General for Respondent No.1.
Mr. A.K. Abhyankar with Mr. Anirudha Joshi & Mr. Sanjay Jain i/b. Rajesh Shukla for Respondent No.5.
Mr. D. H. Mehta with Ms. Deepa Chavan and Mr. Pankaj Kansara for Respondent No.6.
Mrs. A.R. Joshi for Respondent No.7.

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CORAM : DR.D.Y.CHANDRACHUD, J.

December 7, 2006.

P.C.

The Chamber Summons has been instituted to seek relief to the effect that the Second Petitioner be directed to delete the name of the First Petitioner, Abdul Rashid Abdul Rehman Yusuf, from the array of parties. In the alternative, the applicant has sought relief to the effect that he should be transposed as

Respondent to the Petition.

The Writ Petition before the Court purports to have been filed by two Petitioners who are described thus in the cause title:

> "1. Abdul Rashid Abdul Rehman Yusuf,
> the heir of Late Sir Mohd. Yusuf Khot
> thru Shri George P. Joseph, the Lawful
> Irrevocable Constituted Attorney,
> having his office at Leo Land,
> Leo Hill Road, Powai, Mumbai-400 076.
>
> -2. Shri George P. Joseph,
> Managing Director of Leo Group of Companies,
> having its office at Leo Land,
> Leo Hill Road Powai, Mumbai-400 076."

In para 2 of the Writ Petition, it has been averred that the First Petitioner is the heir of late Sir Mohd. Yusuf Khot and a beneficiary under his last will and testament dated 20th August 1960. The First Petitioner is sought to be represented by his "true and lawful irrevocable Constituted Attorney" who is the Second Petitioner. The Second Petitioner claims under Powers of Attorney dated 25th April 2003 and 5th September 2003 and a Registered Development-cum-Sale Agreement dated 25th April 2003. In the affidavit in support of the Chamber Summons, it has been stated

that the Applicant, Abdul Rashid Abdul Rehman Yusuf, has, by a communication dated 2nd December 2003, cancelled and terminated the agreement and the Powers of Attorney. A notice has accordingly been issued in the Free Press Journal on 16th July 2005. The affidavit in support of the Chamber Summons has been verified by Saifuddin Mallik, who again is a Constituted Attorney. However, a supporting affidavit has also been filed by Shri Abdul Rashid Abdul Rehman Yusuf on 2nd November 2006 stating that he has terminated the Powers of Attorney in favour of the Second Petitioner and that he affirms the correctness of the affidavit in support of the Chamber Summons.

At this stage, it would be material to note that the Second Petitioner instituted a suit for specific performance before this Court (Suit 1662 of 2005) on 20th June 2005. The relief sought therein includes a declaration that the agreements dated 25th April 2003 and 5th September 2003 are valid and subsisting. The suit instituted by the Second Petitioner against the First Petitioner is sufficient in itself to establish that there is a lis between the two which is pending before this Court. No application for interim relief has been made in the suit until date. In these circumstances, it

would not be permissible for the Second Petitioner to pursue the proceedings in the main Writ Petition for and in the name of the First Petitioner. The name of the First Petitioner, Shri Abdul Rashid Abdul Rehman Yusuf is accordingly deleted. However, it is clarified that the said order shall not come in the way of the Second Petitioner asserting such rights as he claims in the suit pending on the Original Side of this Court. The Chamber Summons is made absolute in terms of prayer clause (a).

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